

**THE TRIAL CHAMBER**  
**SPECIAL TRIBUNAL FOR LEBANON**

**Case No:** STL-11-01/T/TC

**Before:** Judge David Re, Presiding  
Judge Janet Nosworthy  
Judge Micheline Braidy  
Judge Walid Akoum, Alternate Judge  
Judge Nicola Lettieri, Alternate Judge

**Registrar:** Mr Daryl Mundis

**Date:** 5 May 2017

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

**SALIM JAMIL AYYASH  
HASSAN HABIB MERHI  
HUSSEIN HASSAN ONEISSI  
ASSAD HASSAN SABRA**

**DECISION DENYING JOINT DEFENCE MOTION TO PREVENT THE  
PROSECUTION USING DEMONSTRATIVE EVIDENCE (POWERPOINT SLIDES)  
DURING MR ANDREW DONALDSON'S TESTIMONY**

**Office of the Prosecutor:**

Mr Norman Farrell & Mr Alexander Milne

**Legal Representatives of**

**Participating Victims:**

Mr Peter Haynes, Mr Mohammad F. Mattar  
& Ms Nada Abdelsater-Abusamra

**Counsel for Mr Salim Jamil Ayyash:**

Mr Emile Aoun, Mr Thomas Hannis & Chad Mair

**Counsel for Mr Hassan Habib Merhi:**

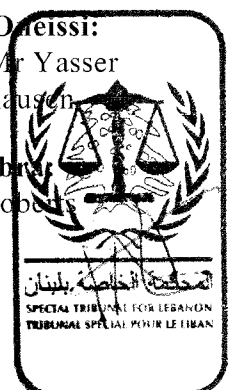
Mr Mohamed Aouini, Ms Dorothée Le Fraper du Hellen & Mr Jad Khalil

**Counsel for Mr Hussein Hassan Oneissi:**

Mr Vincent Courcelle-Labrousse, Mr Yasser Hassan & Ms Natalie von Wistinghausen

**Counsel for Mr Assad Hassan Sabra:**

Mr David Young & Mr Geoffrey Robson



## INTRODUCTION

1. Visual aids, such as charts, graphs and diagrams, greatly assist courts in understanding complex technical evidence and facts. Microsoft PowerPoint presentation slides are often used for this purpose. In this case, the Trial Chamber has received PowerPoint slides as demonstrative evidence to help it understand the lengthy and complex technical evidence of Prosecution experts, Mr Gary Platt (Witness PRH147), and Mr John Edward Phillips (Witness PRH435), on the general topics of telecommunications cell site analysis and the co-location of multiple mobile handsets to a single user.<sup>1</sup>

2. The next phase of the Prosecution's case concerns the attribution—to the four Accused, and the former Accused, Mr Mustafa Amine Badreddine—of mobiles allegedly used in the attack in Beirut on 14 February 2005 that killed former Lebanese Prime Minister, Mr Rafik Hariri and others. A Prosecution analyst, Mr Andrew Donaldson (Witness PRH230), prepared and subsequently updated 'attribution' reports related to these five individuals, examining evidence attributing one or more mobile telephone numbers to each. For each Accused, and for Mr Badreddine, the Prosecution also prepared and disclosed to the Defence a PowerPoint presentation of visual slides for use during Mr Donaldson's testimony, which is scheduled to commence on 8 May 2017. The Prosecution intends to use these five sets of slides to guide Mr Donaldson through his evidence, by reference to each report.

3. Mr Donaldson, in his five reports, analysed numerous Prosecution exhibits, including witness statements and testimony, extended family trees, extracts from official Lebanese records, and documents such as electricity bills, university records, medical records and telecommunications records. The latter include telecommunications subscriber notes and SMS text content. He also reviewed the Prosecution's cell site evidence.

4. His reports and slides also include 'geographical profiling', using cell sector usage of mobiles and contact profiles of mobiles in contact with those attributed to the Accused. From analysing this data, Mr Donaldson concludes that each Accused, and Mr Badreddine, used certain mobiles pleaded in the amended consolidated indictment for their alleged involvement on the attack of 14 February 2005. The slides illustrate, or highlight, with graphs, charts, diagrams and photographs, relevant parts of his reports. They are a form of demonstrative evidence. For example, the PowerPoint presentation related to the Accused, Mr Salim Jamil

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<sup>1</sup> See e.g. P1118, P1172, P1173, P1174, P1175, P1177, P1178, P1180, P1188, P1189, P1793, P1807 and P1935.

Ayyash, contains 273 slides and the attribution report related to him is 469 pages in length, including annexes.<sup>2</sup>

### **DEFENCE APPLICATION AND SUBMISSIONS**

5. On 26 April 2017, counsel for Mr Ayyash made an oral application in court asking the Trial Chamber to prevent the Prosecution using the PowerPoint slides related to Mr Ayyash as demonstrative evidence during the Prosecution's examination-in-chief of Mr Donaldson.<sup>3</sup> Counsel for Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra orally joined the application.<sup>4</sup>

6. The Ayyash Defence argues that these slides do not constitute demonstrative evidence and have no evidentiary value because the Prosecution failed to cross-reference them to evidence or exhibits, or to include citations linking these slides to the attribution reports. Without these cross-references, the PowerPoint presentation constitutes a new report.

7. The Prosecution responded that the PowerPoint presentations are entirely based on Mr Donaldson's attribution reports and that they are 'merely a visual support, an illustration of certain concepts to assist the Chamber and the Parties to follow Mr Donaldson's evidence'.<sup>5</sup> It has no legal obligation under the Special Tribunal's Statute and Rules of Procedure and Evidence to cross-reference such demonstrative evidence to the reports.

8. The Prosecution disclosed to the Ayyash Defence, on 4 May 2017, a 19-page document cross-referencing some of the PowerPoint slides to Mr Donaldson's attribution report related to Mr Ayyash. The Ayyash Defence, however, maintained its application arguing that the document prepared by the Prosecution contains source material only for 64 out of 273 slides and that those references are not clear because each slide contains multiple assertions. The Defence further maintained that the Prosecution should not be allowed to use the remaining 209 slides if they do not contain references to the underlying evidence.<sup>6</sup>

9. The Prosecution responded that the Defence was aware that Mr Donaldson was going to testify, at least since his testimony in July 2015, and that the PowerPoint slides were disclosed more than one week before the start of his testimony. Preparing a voluminous and

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<sup>2</sup> The final attribution report related to Mr Merhi is of 173 pages (with a 24-page addendum); that related to Mr Oneissi 67 pages; for Mr Sabra 136 pages; and for Mr Badreddine, 801 pages.

<sup>3</sup> Transcript of hearing on 26 April 2017, pp 46-47.

<sup>4</sup> Transcript of hearing on 26 April 2017, pp 47-50.

<sup>5</sup> Transcript of hearing on 26 April 2017, p. 51.

<sup>6</sup> Provisional transcript of hearing on 4 May 2017, pp 96-97.

exhaustive document with all the cross-references for each slide would be a time and resource consuming task. Mr Donaldson, however, will explain each slide, and that all the underlying evidence is contained in his reports. As the Prosecution does not expect cross-examination in relation to the Ayyash attribution report to commence before 23 May 2017, the Ayyash Defence will have more than two weeks of preparation. Counsel for the other Accused will have more time than that.

### **DISCUSSION AND DECISION**

10. Using visual aids, such as PowerPoint presentations, as demonstrative evidence to assist in presenting complex and lengthy witness testimonies is a well-established practice in international criminal courts and tribunals. The Special Tribunal's Statute and Rules—like those of the other international criminal courts and tribunals—contain no provision that would oblige the Prosecution to cross-reference such visual aids to the underlying evidence, as requested by Defence counsel.

11. In the absence of such an explicit rule, the issue is whether the Trial Chamber should exercise its discretion and order the Prosecution to cross-reference the slides under the general provisions on the conduct of the trial proceedings. More specifically, Articles 16 (4) and 21 (1) of the Statute and Rules 70 (C) and 89 (B) mandate the Trial Chamber to balance between the right of the Defence to efficiently prepare its case and an expeditious trial.

12. The Trial Chamber has acknowledged the utility and benefit of the Prosecution's slide presentations during Mr Platt's and Mr Phillips' testimony. Using PowerPoint slides simultaneously with the expert reports helped the Trial Chamber, and the Parties, to understand and piece together the complex and lengthy expert evidence. Without these demonstrative visual aids it would have been far more difficult to follow the evidence.

13. During Mr Platt's evidence, counsel for Mr Ayyash, in particular, made constant submissions alleging inconsistencies between the slides he used and his reports, and the lack of cross-references to the underlying evidence. These submissions are well noted. The Trial Chamber, however, may nonetheless admit the demonstrative evidence but consider any inconsistencies when determining the weight to given to the testimony and the reports. The slides, it is emphasised, are demonstrative evidence.

14. According to the Prosecution, Mr Donaldson will explain each slide and, if necessary, its source. The Prosecution submits that everything in the slides can be linked to his reports.

15. The Trial Chamber has reviewed the slides and compared them to the five reports. The slides do not explicitly reference evidence, but rather highlight (unsourced) aspects of the reports. The Trial Chamber agrees with Defence counsel that slides containing explicit source references on each slide would have been preferable. This, however, was not done, and retrospectively attempting it now would inevitably delay the trial.

16. The main issue of contention thus appears to be the sufficiency of sourcing. Some cross-referencing to sources and evidence has been done but in a separate document, rather than in the slides themselves, thus necessitating cross-referencing between slides and the source document. This, however, is not a bar to using the PowerPoint slides in court. The reports themselves are, understandably, very well sourced, and it is evident that the slides derive from passages in the reports. Mr Donaldson, where necessary during his testimony, or the Prosecution, can explain from where.

17. The Trial Chamber believes that preparing source linkage of the complexity and scale sought here<sup>7</sup>—and especially at this stage of the proceedings and in the timeframes envisioned—will likely lead to mistakes and errors, leading in turn to continuous requests for clarification and further litigation, and thus inevitably delaying the proceedings. The Trial Chamber is not convinced that, on balance, Defence counsel have demonstrated that the Trial Chamber should order this. This is because the benefit of creating such a document, or sourcing each slide on the slide itself, are outweighed by the burden on the Prosecution's and Special Tribunal's resources. This includes the possible complications involved in its preparation and adherence to it throughout Mr Donaldson's testimony. Balancing the rights of the Defence with the interests of an expeditious trial, at this stage of the proceedings, it would be inexpedient to order the Prosecution to prepare the requested linkage document(s).

18. Accordingly, the interests of justice warrant allowing the Prosecution to use its PowerPoint presentations—in their present form—to facilitate and help the Trial Chamber and the Parties to understand Mr Donaldson's evidence. The Trial Chamber will therefore not exercise its discretion and denies the joint Defence application to prevent their use without more explicit cross-referencing.

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<sup>7</sup> The PowerPoint presentation related to Mr Ayyash is of 273 slides; the presentation related to Mr Oneissi is of 49 slides; the presentation related to Mr Sabra is of 115 slides; the presentation related to Mr Merhi is of 137 slides; and the presentation related to Mr Badreddine is of 75 slides.

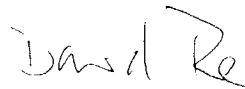
**DISPOSITION**

**FOR THESE REASONS**, the Trial Chamber:

**DISMISSES** the application.

Done in Arabic, English, and French, the English version being authoritative.

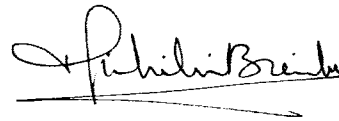
Leidschendam,  
The Netherlands  
5 May 2017



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Judge David Re, Presiding



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Judge Janet Nosworthy



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Judge Micheline Braidy

